ATTORNEY-GENERAL

v.

CHIOW THIAM GUAN

HIGH COURT MALAYA, KUALA LUMPUR
HASHIM YEOP SANI J
[CIVIL SUIT NO. A12 OF 1982]
12 AUGUST 1982

CIVIL PROCEDURE: *Statement of Claim - Application to strike out - Whether discloses grounds of action - Whether proper to allow issue to be reopened - Covered all stages of judicial process.*

The respondent was convicted by the High Court under s. 57(1) of the Internal Security Act which carries a mandatory death sentence. The conviction and sentence was upheld by the Federal Court and the Pardons Board had also convened and considered his case. He sought a declaration that the mandatory death sentence was unconstitutional, oppressive and infringed the equality provision of the Constitution. This is an application to have respondent's statement of claim struck out under O. 18 r. 19 of the Rules of the High Court 1980.

Held:
The statement of claim should be struck out only in plain and obvious cases. The respondent had exhausted all remedies available to him both judicial and administrative. Therefore the subject sought for declaration is not a proper one and that the discretion of the Court should be exercised against granting the application to the respondent.

[Application of the Attorney General granted and the statement of claim struck out.]

Cases referred to:
Low Yat v. G.C. Grace [1947] 13 MLJ 115
Mooney & Ors. v. Peat, Marwick, Mitchell & Co. & Anor. [1967] 1 MLJ 87
Runyowa v. The Queen [1967] AC 26
De Freitas v. George Ramoutar Benny & Ors. [1976] AC 239
Ong Ah Chuan v. Public Prosecutor [1981] 1 MLJ 66

Legislation referred to:
Federal Constitution, art. 5(1), 42
Internal Security Act 1960, s. 57(1)
Rules of the High Court 1980, O. 18 r. 19

For the applicant/defendant - Abu Talib, Attorney-General (Lim Beng Choon with him)
For the respondent/plaintiff - Karpal Singh (Ngeow Yin Ngee and Lee Min Choon with him); M/s. Karpal Singh & Co.

JUDGMENT

Hashim Yeop Sani J:

This is an application to have the plaintiff's statement of claim struck out under O. 18 r. 19 of the Rules of the High Court 1980 on the grounds that the statement of claim discloses no cause of action. The law to be applied is elementary and has been set out in a number of cases - see *Low Yat v. G.C. Grace* [1947] 13 MLJ 115 and *Mooney & Ors. v. Peat, Marwick, Mitchell & Co. & Anor*. [1967] 1 MLJ 87. The principle which seems to have been established is that the statement of claim should be struck out only in plain and obvious

cases where the Judge can say at once that the statement of claim as it stands is insufficient even if proved to entitle the plaintiff to the relief. It follows that so long as the statement of claim discloses some ground of action the mere fact that the plaintiff is not likely to succeed is no ground to strike out the statement of claim.

Bearing this principle in mind I would approach the present application by asking the following questions -

(1) Is there some ground disclosed in the statement of claim? and

(2) If the answer is in the affirmative, is it proper to allow the issue to be reopened having regard to the history of the case?

As regards the first question it is in my opinion that the contention in the plaintiff's statement of claim must fail *in limine.* The issue sought to be canvassed by the plaintiff in seeking the declaration is that the mandatory sentence of death under s. 57(1) of the Internal Security Act is unconstitutional as being unreasonable, oppressive and infringing the equality provision of the Constitution.

As regards Article 5(1) of the Constitution the law is that if Parliament deems it necessary that the death penalty should be mandatory it is not within the province of the Court to adjudicate upon the wisdom of such a law - see *Runyowa v. The Queen* [1967] AC 26. The law may be harsh but the role of the Court is only to administer the law as it stands. See also *De Freitas v. George Ramoutar Benny & Ors.* [1976] AC 239 and *Ong Ah Chuan v. Public Prosecutor* [1981] 1 MLJ 66.

There is no question that the equality provision of Article 8 is infringed. I cannot see how Article 8 is contravened because although the mandatory death sentence may appear cruel but it is not unequal in its application in that every person convicted of the offence would be subject to the same punishment.

As regards the second question it would in my opinion be irregular to reopen the issue. The plaintiff had exhausted all remedies available to him both judicial and administrative. He was convicted in the High Court and the conviction and sentence was upheld by the Federal Court. The Pardons Board under Article 42 of the Constitution had also been convened and had considered his case. In other words the plaintiff had gone through all the stages of the judicial process and his case had also been placed before the Yang di-Pertuan Agong in the Pardons Board. Therefore the subject sought for declaration is not a proper one and that the discretion of the Court should be exercised against granting the application of the plaintiff.

Finally, it is urged on behalf of the plaintiff that the Court should await the decision of the Indian Supreme Court in a pending suit on a similar declaration. I do not think that will provide a sufficient basis not to strike out the claims on the grounds stated above.

The application of the Attorney-General is granted and the statement of claim of the plaintiff is struck out. No order as to costs. On the same grounds the Order of Stay granted on 27 July 1982 is set aside.

Also found at [1983] 1 CLJ 27